

EXHIBIT 5

PR#9833

STRONG, J.D.

4/9/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs. CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF J.D. STRONG
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 9, 2009, BEGINNING AT 8:40 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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On behalf of the DEFENDANT-TYSON FOODS, TYSON CHICKEN,
TYSON POULTRY AND COBB-VANTRESS, INC.:

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On behalf of the DEFENDANT-PETERSON FARMS, INC.:

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REPORTED BY: Laura L. Robertson, CSR, RPR

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1 methods that are described on page 2 and 3, and Mr.
2 Strong, you are the state's trustee for natural
3 resource damages; correct?

4 A. Correct.

5 Q. And I would assume that you would be
6 involved in any assessment of natural resource damages
7 under CERCLA. Do you agree with that?

8 A. I would agree that I would be involved to
9 some extent, yes.

10 Q. Okay. Mr. Strong, tell me when, where and
11 how the pre-assessment phase described on page 2 for a
12 natural resource damage assessment has been completed
13 in connection with this lawsuit?

14 MR. LENNINGTON: Objection, compound
15 question.

16 THE WITNESS: Again, I'm not certain. I
17 have only been the trustee for six months now. So
18 there was a trustee before me that that would have
19 been involved in most of this process.

20 Q. (BY MR. GEORGE) And you worked directly for
21 that trustee as his chief of staff; correct?

22 A. I did.

23 Q. To the best of your knowledge, Mr. Strong,
24 has the office of the Secretary of the Environment
25 completed a pre-assessment phase as described on page

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1 2 in Exhibit 2 with respect to the Illinois River
2 Watershed?

3 MR. LENNINGTON: Objection, asked and
4 answered.

5 THE WITNESS: I'm not certain.

6 Q. (BY MR. GEORGE) So to the best of your
7 knowledge, no or to the best of your knowledge yes?

8 A. I don't know either way.

9 Q. What about the assessment plan phase
10 described on the bottom of page 2, to the best of your
11 knowledge, Mr. Strong, has the office of the Secretary
12 of the Environment completed an assessment plan phase
13 for purposes of it's natural resource damage claim
14 against the poultry companies?

15 A. Again, I'm not certain.

16 Q. Do you see the injury determination phase
17 that is described on page 3?

18 A. Yes.

19 Q. To the best of your knowledge, Mr. Strong,
20 has the office of the Secretary of the Environment
21 completed an injury determination phase as described
22 on page 3 of this document with respect to its lawsuit
23 against the poultry companies?

24 A. I'm not sure about that which is described
25 here, but I know an injury determination has been

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1 completed.

2 Q. Was there an opportunity for public
3 participation in that injury determination phase?

4 A. I'm not certain.

5 Q. Do you see the bottom of page 3, there is a
6 post assessment, includes a report of assessment
7 containing the results of the assessment, and it
8 documents that the assessment had been carried out
9 according to regulations. Do you see that?

10 A. Yes.

11 Q. Are you aware of a report of assessment for
12 purposes of the state of Oklahoma's natural resource
13 damage claim against the poultry companies relating to
14 the Illinois River Watershed?

15 A. I'm not aware of one that's described here.

16 Q. Go back to page 2 for a moment. The
17 sentence we read earlier from the second paragraph
18 that says, "There is a multi-stage administrative
19 process with opportunities for the public and
20 potentially responsible party participation," do you
21 see that?

22 A. On page 2?

23 Q. Yes, sir. Second paragraph under the
24 heading Natural Resource Damage Assessment?

25 A. Yes.

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1 THE WITNESS: I'm sure we have ample
2 documents that have been submitted that lay out all of
3 the factual basis for that.

4 Q. (BY MR. GEORGE) Listen to my question
5 carefully and it was can you provide me with any
6 factual basis, Mr. Strong, for that claim against my
7 client?

8 A. I cannot without having all of our documents
9 in front of me.

10 Q. Let turn back to Exhibit 5 for a moment.
11 Let's put aside 4. And for the record, Exhibit 5 is
12 the agreement that was entered into between Oklahoma
13 and Arkansas the latter part of 2003; correct?

14 A. Correct.

15 Q. Okay. Turn to the second page of that
16 agreement. Do you see the heading, Arkansas
17 Legislation?

18 A. Yes.

19 Q. A part of the agreement with the state of
20 Arkansas back in 2003 was that Arkansas would pass
21 statutes establishing a mandatory poultry litter
22 regulatory program; correct?

23 A. That was included in the agreement, yes.

24 Q. Okay. It was part of the deal; right?

25 A. It was a recitation of that activity in the

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1 agreement, yes.

2 Q. Was that something Oklahoma wanted them to
3 do?

4 A. I believe -- only speaking for myself at the
5 time that that was a good step.

6 Q. Mr. Strong, when these negotiations were
7 ongoing with the state of Arkansas back in 2003 that
8 led to this agreement, did anyone with your office
9 tell Arkansas that notwithstanding them following
10 through on passing a poultry litter regulatory
11 program, that the state of Oklahoma intended to sue
12 every integrator who operates within the Illinois
13 River Watershed?

14 A. I don't recall whether or not anybody from
15 our office stated that to the state of Arkansas.

16 Q. Seems like something you would recall,
17 someone saying we are going to sue somebody, that
18 doesn't happen everyday, does it?

19 MR. LENNINGTON: Object to the form.

20 THE WITNESS: I don't recall. I don't
21 recall whether or not that was stated in that form or
22 not.

23 Q. (BY MR. GEORGE) It wasn't said in your
24 presence, was it, Mr. Strong?

25 MR. LENNINGTON: Asked and answered.

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1 THE WITNESS: I don't recall if it was.

2 Q. (BY MR. GEORGE) Turn back to page 5 of the
3 agreement. Do you see the section that is entitled,
4 Watershed Plan?

5 A. Yes.

6 Q. Can you read that paragraph, please?

7 A. "States of Arkansas and Oklahoma acting
8 through their environmental agencies will work
9 together in partnership with the Arkansas-Oklahoma,
10 Arkansas River Compact Commission toward the goal of
11 producing a watershed plan."

12 Q. What has been done on that since this
13 agreement was signed in the latter part of 2003, Mr.
14 Strong?

15 A. I recall some discussions between us
16 regarding developing of a watershed plan, but I also
17 recall statements on the part of both states
18 suggesting that such an activity would be futile
19 without being able to reach an agreement on what
20 needed to be done to control the most significant
21 source of pollution in the watershed, the poultry
22 pollution.

23 Q. Wouldn't a watershed management plan be able
24 to control that source? Isn't that the point of the
25 watershed management plan to control sources of

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1 pollution?

2 A. Actually, it is not a control document, no,
3 it is not a regulatory document.

4 Q. Do you agree there has been no watershed
5 plan developed and agreed to between the state of
6 Arkansas and the state of Oklahoma since this
7 agreement was signed in the latter part of 2003?

8 A. Yes.

9 Q. It says that, "The state of Oklahoma and
10 Arkansas would work together in partnership with the
11 Arkansas-Oklahoma, Arkansas River Compact Commission,"
12 do you see that?

13 A. Yes.

14 Q. What is the Compact Commission?

15 A. It is a federally recognized compact between
16 the two states that largely regulates the agreement
17 between the two states on the quantity of water that
18 has to be shared across the border.

19 Q. Now, this paragraph is not talking about the
20 quantity of water, is it?

21 A. No, it is not.

22 Q. Okay. So is it true, Mr. Strong, that back
23 in 2003 the state of Oklahoma agreed on water quality
24 issues to work with Arkansas through the Arkansas
25 River Compact Commission?

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1 A. We agreed that we would partner with the
2 Compact Commission.

3 Q. And have you done that?

4 A. I don't recall if we have had any
5 discussions with the Compact Commission about the
6 plan. Certainly know that nothing has been finalized.

7 Q. Are you aware of any proposal that the state
8 of Oklahoma has made to the Compact Commission toward
9 the goal of producing a watershed plan for the
10 Illinois River Watershed?

11 A. Can you repeat that? Sorry.

12 (Record read)

13 A. I'm not aware of one.

14 Q. To the best of your knowledge, Mr. Strong,
15 has Arkansas abided by the terms of this agreement
16 that was entered into in January -- I'm sorry, in
17 December of 2003?

18 A. I would have to look back through the
19 agreement and see whether or not I have -- I haven't
20 necessarily reconciled their actions with the
21 agreement.

22 Q. Well, as we sit here today, Mr. Strong, are
23 you aware of any instance in which Arkansas has failed
24 to comply with its obligations under the agreement
25 signed with Oklahoma in December of 2003?

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1 MR. LENNINGTON: Objection, asked and
2 answered.

3 THE WITNESS: Again, I would need to review
4 the entire document as well as my understanding of
5 what Arkansas has done. I think the watershed plan is
6 an example of an area where we haven't, certainly
7 haven't completed the work assigned under the
8 agreement.

9 Q. (BY MR. GEORGE) When you say we, you're
10 referring to both states; correct?

11 A. Both states.

12 Q. So neither state has completed or satisfied
13 the obligation for the watershed plan; correct?

14 A. To the extent that that's an obligation,
15 yes.

16 Q. Anything else that you're aware of as we sit
17 here today that you believe would reflect an instance
18 in which Arkansas has not complied with its
19 obligations under the agreement?

20 A. I would need to read through the entire
21 document again to see if I --

22 Q. Without reading through it again, is there
23 anything that you can identify?

24 A. Not without reading the document again.

25 Q. Okay. Hand you what we will mark as Exhibit